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August 12, 1996

By Hand

MAN

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Mr. William F. Caton Acting Secretary Federal Communications Commission 1919 M Street, NW Washington, DC 20554

Re:

Local Multipoint Distribution Service

CC Docket No. 92-297

Dear Mr. Caton:

On behalf of CellularVision USA, Inc., enclosed please find an original and four (4) copies of Comments filed in response to the Fourth Notice of Proposed Rulemaking in the above-referenced proceeding.

Please direct any questions regarding this matter to the undersigned.

Sincerely,

Michael R. Gardner

Charles R. Milkis

Counsel for CellularVision USA, Inc.

**Enclosures** 

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# Before the FEDERAL COMMUNICATIONS COMMISSION Washington, DC 20554

In the Matter of

Rulemaking to Amend Parts 1, 2, 21 and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services

CC Docket No. 92-297

#### COMMENTS OF CELLULARVISION USA, INC.

THE LAW OFFICES OF MICHAEL R. GARDNER, P.C. 1150 Connecticut Ave., NW Suite 710 Washington, DC 20036 (202) 785-2828 (Tel) (202) 785-1504 (Fax)

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#### **SUMMARY**

LMDS is a proven, broadband wireless technology that is poised to immediately provide interactive video, telephony and data service competition to incumbent telco and cable providers throughout the United States. To fully and quickly realize LMDS's staggering potential, the Commission must commence LMDS auctions with one license per BTA within this calendar year. Achieving this timeline for LMDS auctions is essential to ensuring the fullest utilization of LMDS in the changing and explosive U.S. communications marketplace which is currently undergoing bedrock changes as a result of the Telecommunication Act of 1996 – an Act which is being aggressively implemented by a Commission that takes seriously the pro-competitive mandate of the 104th Congress.

For LMDS to be on a parity competitive footing with the major telcos and cable MSOs in the explosive U.S. communications marketplace, the Commission must allocate sufficient spectrum for LMDS. In view of the encumbered nature of the 150 MHz from 29.1-29.25 GHz allocated to LMDS, CellularVision supports the Commission's proposed allocation of an additional 300 MHz at 31 GHz for LMDS. CellularVision also applauds the Commission's effort to allocate an unspecified portion of grossly underutilized spectrum below 27.5 GHz for commercial LMDS use—Further, CellularVision supports the Commission's proposal to license each LMDS operator with at least 1.3 GHz of spectrum as contemplated by the <u>First Report and Order and Fourth NPRM</u>, as this is essential for LMDS licensees to be full-fledged competitors to entrenched telco and cable providers in BTAs throughout the country. Moreover, the Commission's LMDS service rules should provide LMDS licensees with the flexibility to enter into post-auction sublease agreements, which will allow the marketplace to determine the most efficient use of the LMDS

spectrum, and also facilitate educational and non-profit access to LMDS spectrum.

Finally, to ensure that LMDS will be a service that is licensed to and operated by a whole new wave of entrepreneurs, the Commission should adopt restrictions that limit the seven Regional Bell Operating Companies and their affiliates, plus the ten largest cable MSOs and their affiliates, to acquiring an LMDS license in one BTA only - which BTA cannot be located in their respective telephone or cable service areas. As the United States Small Business Administration has noted repeatedly in the record in this proceeding, LMDS can provide an excellent and low-cost means for small businesses to expand their opportunity to provide wireless telecommunications services. Accordingly, the Commission should further facilitate the role of "small business" entrepreneurs in the exciting LMDS marketplace by adopting realistic definitions for small business, mindful of the special buildout requirements of LMDS systems within large BTAs. In this regard, CellularVision believes that for LMDS purposes "small business" should be defined as an entity that has average annual gross revenues of not more than \$100 million for the preceding three years, and that small businesses generally should be entitled to a 35% bidding credit, with a small business bidding for a particular license against a company with more than \$200 million in annual revenues receiving a 55% bidding credit

With this flexible and reasoned approach to LMDS – and with auctions of 1.3 GHz licenses this year – the Commission's goals for LMDS as reflected in the July 17, 1996 adoption of the <u>First Report and Order and Fourth NPRM</u> will be realized and LMDS will provide competitive consumer choices in every service area – interactive video, telephony and data – throughout the United States as we enter the 21st Century.

# Before the FEDERAL COMMUNICATIONS COMMISSION Washington, DC 20554

In the Matter of

Rulemaking to Amend Parts 1, 2, 21 and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services

CC Docket No. 92-297

#### COMMENTS OF CELLULARVISION USA, INC.

CellularVision USA, Inc.<sup>1</sup> ("CellularVision") by its attorneys, hereby files Comments in response to the <u>Fourth Notice of Proposed Rulemaking</u> ("Fourth NPRM") (FCC 96-311) adopted July 17, 1996 in the above-referenced proceeding.

#### I. INTRODUCTION

During the past ten years, the principals of Cellular Vision<sup>2</sup> have pioneered the

<sup>&</sup>lt;sup>1</sup> CellularVision USA, Inc. Is publicly traded on the NASDAQ National Market under the symbol "CVUS."

<sup>&</sup>lt;sup>2</sup> For purposes of this document, references to "CellularVision" include the following related companies which are majority owned and controlled by common principals: Suite 12 Group, which commenced the development of LMDS in the 28 GHz band, and for which the Commission twice has tentatively awarded a pioneer's preference (see Notice of Proposed Rulemaking, Order, Tentative Decision and Order on Reconsideration ("First NPRM"), CC Docket No. 92-297, 8 FCC Rcd 557, paras.

development of LMDS, beginning in 1986 with initial testing to determine whether a multi-cell broadband delivery system could be deployed in the unused 28 GHz band, to 1996, where the nationwide deployment of LMDS in the 28 GHz band is a reality and will soon bring consumers a new competitive choice in interactive video, telephony and data services. Recognizing CellularVision's accomplishments, the Commission twice has tentatively granted CellularVision a pioneer's preference for its singular leadership role in creating the revolutionary, versatile CellularVision<sup>TMSM</sup> LMDS technology.<sup>3</sup>

In 1991, the Commission awarded CellularVision's principals a commercial license to deploy LMDS in the New York PMSA, making CellularVision the only commercially licensed LMDS provider in the United States. In 1993, to ensure the prompt and most robust build-out of its LMDS system for the 8.3 million persons in its licensed service area, CellularVision enlisted strategic partners and investors Philips Electronics North America Corporation, Bell Atlantic Corporation and J.P. Morgan—all of whom contributed both technical and financial support to the proposed build-out of the New York PMSA. Then, pursuant to Commission authorization finally granted

<sup>57-65 (1993);</sup> Third Notice of Proposed Rulemaking and Supplemental Tentative Decision ("Third NPRM"), 11 FCC Rcd 53, paras. 68-73 (1995); and CellularVision of New York, L.P., which operates a commercial LMDS video service as an alternative to cable television in the New York Primary Metropolitan Statistical Area in the 27.5-28.5 GHz band pursuant to a commercial license granted by the Commission in 1991. See Hye Crest Management, Inc., 6 FCC Rcd 332 (1991).

<sup>&</sup>lt;sup>3</sup> See Note 2, supra.

in December 1995,<sup>4</sup> CellularVision commenced its aggressive build-out throughout the New York PMSA. Today, CellularVision's LMDS system currently passes approximately 900,000 households in its service area, and provides consumers with a high quality 49-channel alternative to cable television at a lower cost than its franchised cable competitors. CellularVision eagerly anticipates the opportunity to offer consumers in its service area a full range of two-way services, and to bid on LMDS licenses in other markets throughout the country once the FCC conducts LMDS spectrum auctions, presumably later this year.

On July 17, 1996, the Commission concluded years of deliberations with the LMDS and satellite industries and took a significant step towards the nationwide licensing of LMDS through spectrum auctions with its adoption of a <u>First Report and Order and Fourth Notice of Proposed Rulemaking</u>. In the <u>First Report and Order portion</u> of the decision, the Commission finalized a 28 GHz band segmentation plan, providing LMDS with 850 MHz primary, from 27 5-28.35 GHz, for two-way use, and 150 MHz co-primary with Mobile Satellite Service (Motorola Iridium and TRW), from 29.1-29.25 GHz, for hub-to-subscriber transmissions only.<sup>6</sup>

<sup>&</sup>lt;sup>4</sup> See In re Applications of CELLULARVISION, INC. For authorization to increase the number of hub transmitters within the New York Primary Metropolitan Statistical Area, DA 95-2429 (released December 7, 1995) (granting CellularVision's applications for 34 new transmitter sites).

<sup>&</sup>lt;sup>5</sup> CellularVision's leadership role in the LMDS industry is further evidenced by its completion of a successful public stock offering on the NASDAQ National Market in February 1996, making CellularVision the only publicly traded LMDS company.

<sup>&</sup>lt;sup>6</sup> First Report and Order, para. 42.

The "wealth of innovative services" envisioned by the Commission from LMDS includes facilities-based local exchange telephone service, two-way video, teleconferencing, telemedicine, telecommuting, data services, global networks, distance learning and broadband video-on-demand. In this regard, the Commission has explicitly recognized LMDS "as an important potential source of competition in both the local exchange and multichannel video programming markets." However, in view of the prohibition on LMDS return links in the 150 MHz, the Commission stated that "without additional unencumbered spectrum, some proposed LMDS systems would not be able to provide the full panoply of two-way services anticipated." As a result, the Commission has expressed a commitment to obtain additional spectrum for LMDS, and has commenced two separate efforts in this regard.

First, the Commission has pledged to revisit the sharing of spectrum below 27.5 GHz between LMDS and the Government sharing which CellularVision believes is possible despite NASA's claims in March 1996 to the contrary. Specifically, the Commission expressed its view that "more in-depth sharing studies of fixed services and LMDS and Government spectrum below 27.5 GHz may yield more positive results," and it directed its staff to continue discussions with NTIA "to explore the

<sup>&</sup>lt;sup>7</sup> <u>Id</u>., paras. 14-15.

<sup>&</sup>lt;sup>8</sup> Fourth NPRM, para. 106.

<sup>&</sup>lt;sup>9</sup> <u>Id</u>., para. 97.

feasibility of shared use or reallocation of some portion of this band from the Government for commercial usage."<sup>10</sup> CellularVision enthusiastically supports this effort by the Commission to obtain spectrum below 27.5 GHz for LMDS, which, from a technical and equipment standpoint, would be immediately compatible with the 1 GHz of 28 GHz spectrum already allocated by the Commission for LMDS. We note that Canada has allocated 3 GHz of spectrum for its version of LMDS, and that Canada's allocation, from 25.35 GHz to 28.35 GHz, includes the spectrum below 27.5 GHz. CellularVision offers any assistance, technical or otherwise, it can provide in the Commission's important effort to maximize the commercial as well as the governmental use of largely underutilized potential LMDS spectrum adjacent to the 27.5 GHz spectrum now allocated for LMDS on a nationwide basis.

Additionally, in the Fourth NPRM portion of the decision the Commission proposed to allocate 300 MHz in the 31.0 to 31.3 GHz band for two-way LMDS. As discussed below, CellularVision also supports this enlightened proposal to allocate additional unencumbered spectrum for LMDS. While the use of 31 GHz spectrum in conjunction with a 28 GHz LMDS system may not be immediately viable given the lack of LMDS equipment specifically designed for the 31 GHz band, CellularVision believes that the Commission's allocation of 31 GHz spectrum for LMDS will provide the regulatory certainty and resulting inducement for the U.S. communications industry to undertake the research and development that ultimately will produce

<sup>&</sup>lt;sup>10</sup> First Report and Order, para. 39

technically sound and commercially viable LMDS uses of this portion of the largely underutilized 31 GHz spectrum.

Cellular Vision applauds the Commission for its commitment to LMDS in the 28 GHz band, as well as the Commission's efforts to allocate additional spectrum below 27.5 GHz and at 31 GHz for the robust and flexible use by LMDS licensees as they commence providing the varied interactive video, telephony and data services to consumers afforded by this revolutionary service. Importantly, while Cellular Vision supports the Commission's efforts to obtain additional spectrum for LMDS, Cellular Vision reiterates its previous comments to the Commission that LMDS auctions must commence before the end of 1996 if this new technology is to compete effectively in the changing communications marketplace being shaped by the Commission as it implements the Telecommunications Act of 1996 ("Telecom Act"). In view of the Telecom Act's overriding goal of promoting vigorous competition for incumbents in the local exchange and multichannel video markets, it is imperative that the Commission license LMDS this year while the window of opportunity exists for LMDS to emerge on a parity basis as a nationwide provider of interactive video, voice and data services. Accordingly, if the Commission's current efforts to allocate additional unencumbered spectrum in the 31 GHz band for LMDS cannot be concluded in time to allow such additional spectrum to be auctioned before the end of 1996 in a single block along with the 1 GHz in the 28 GHz band already allocated for LMDS, CellularVision urges the Commission to commence auctions of the 1 GHz in the 28 GHz band before the end of 1996, with subsequent auctions of any

additional spectrum allocated for LMDS.

#### II. ALLOCATION OF 31 GHz SPECTRUM FOR LMDS

In the Fourth NPRM, the Commission proposes to designate, on a primary protected basis, the 31.0-31.3 GHz band to LMDS for hub-to-subscriber and subscriber-to-hub transmissions. Noting that its 28 GHz band plan does not permit two-way LMDS transmissions in the 29.1-29.25 GHz band "at this time," 11 the FCC stated that the 31 GHz proposal is intended to provide LMDS operators with additional unencumbered spectrum to ensure that LMDS systems will be able to provide consumers with the full panoply of two-way LMDS services anticipated. 12

Cellular Vision supports the Commission's proposal to designate, on a primary protected basis, the 31.0-31.3 GHz band to LMDS for two-way transmissions. The Commission appropriately has concluded in the Fourth NPRM that "[i]n order to ensure that there is adequate two-way interactive capacity for the various proposed

<sup>&</sup>lt;sup>11</sup> <u>Id.</u>, para. 37; <u>see also</u> paras. 71, 98. While the sharing rules adopted for the 150 MHz prohibit LMDS subscriber-to-hub transmissions due to concerns about potential interference between LMDS and MSS, the Commission stated that it will revisit that limitation if the LMDS industry can demonstrate definitively that LMDS return links can technically operate without interfering with MSS feeder links. <u>See Id.</u>, para. 71. As the pioneer of LMDS and based on its conviction that two-way LMDS service is possible in the 29.1-29.25 GHz band without causing interference to MSS systems, CellularVision hopes to conduct technical tests with Commission oversight to demonstrate this point as soon as an Iridium satellite is in operation, either on an experimental or commercial basis

<sup>&</sup>lt;sup>12</sup> See Fourth NPRM, para. 97.

LMDS systems, we recognize the need to designate additional spectrum for LMDS "<sup>13</sup> Thus, the 300 MHz of 31 GHz spectrum is necessary to compensate for the encumbered nature of the 150 MHz from 29.1-29.25 GHz.

With regard to the 31 GHz band, Cellular Vision believes there are multiple potential uses for the 31 GHz portion of the spectrum for LMDS which have yet to be fully ascertained. In this regard, it is noteworthy that 10 years ago, when Cellular Vision began experimenting with the application of its LMDS technology in the 28 GHz spectrum, the multiple consumer choices for LMDS which are recognized by the Commission in the First Report and Order were unthinkable. However, as demonstrated by Cellular Vision's activities in the New York PMSA, 28 GHz LMDS systems are technically possible and commercially viable today primarily as a result of Cellular Vision's pioneering work that began 10 years ago. Likewise, while the 31 GHz band has yet to receive the serious attention of the burgeoning LMDS industry, once the industry has the regulatory certainty that 300 MHz of 31 GHz spectrum is available for LMDS application, the technological genius of the U.S. communications industry, as reflected by companies like Philips. Titan and MA/Com, can be expected to promptly develop commercially viable applications and equipment for LMDS utilization of the 31 GHz band in conjunction with the proven applications of 28 GHz LMDS services. Importantly, the Commission's allocation of 31 GHz spectrum for LMDS will create the incentive for the industry to commit the resources for the

<sup>&</sup>lt;sup>13</sup> <u>ld</u>., para. 100.

research and development necessary to fully appreciate 31 GHz LMDS's application with 28 GHz LMDS.<sup>14</sup>

The Commission proposes to designate LMDS as "primary protected" in the 31.0-31.3 GHz band since under current rules 31 GHz licensees are not afforded any rights or obligations with respect to interference with other licensed operations. CellularVision supports the Commission's proposal, at paragraph 103 and footnote 170 of the Fourth NPRM, that under this "primary protected" designation, LMDS licensees will be entitled to interference protection from any other currently authorized primary user of the band. In view of the fact that "existing use of the 31 GHz band is relatively light and is concentrated in only a few areas of the country," the Commission's designation of LMDS as "primary protected" should not cause significant hardship. Moreover, LMDS will be providing consumers throughout the country with a well-documented array of important and proven competitive services once it is licensed nationwide.

CellularVision supports the FCC's proposal in paragraph 101 of the <u>Fourth NPRM</u> to assign the 300 MHz in the 31 GHz band and the 1000 MHz in the 28 GHz band together as a single block, thus providing bidders who prevail at auction with 1.3 GHz licenses. As the Commission has accurately recognized, the additional

<sup>&</sup>lt;sup>14</sup> If the Commission formally allocates the 31.0-31.3 GHz band for LMDS, it should provide licensees with appropriate flexibility in deploying services utilizing that spectrum in view of the period of technological development necessary before technically and commercially viable uses of the 31 GHz spectrum are developed.

<sup>&</sup>lt;sup>15</sup> Fourth NPRM, para. 99.

spectrum in the 31 GHz band is necessary to compensate for the encumbered nature of the 150 MHz from 29.1-29.25 GHz, so that an LMDS licensee may offer the full panoply of two-way services contemplated. As a result, pairing the 31 GHz spectrum with the 28 GHz spectrum in a single 1.3 GHz license will maximize the flexibility afforded LMDS licensees to take full advantage of technical innovation and to respond to marketplace needs, some of which are not yet clear and which will not be fully appreciated until LMDS technology is deployed nationwide.<sup>16</sup>

Moreover, by aggregating the available LMDS spectrum in one license per BTA, the Commission will compensate for the limitations currently attendant to the 150 MHz from 29.1-29.25 GHz. The Commission also will increase the value of the total LMDS spectrum for auction purposes, generating maximum federal deficit reducing revenues from the LMDS spectrum with auctions later this year.

In conducting auctions of one LMDS icense in each BTA, the Commission should provide licensees with maximum flexibility and allow a licensee who chooses not to use the full 1.3 GHz to sublease excess spectrum for LMDS-based services that could be provided by third parties pursuant to post-auction private agreements. In that manner, the marketplace will determine the most efficient use of the LMDS spectrum for meeting consumer needs in each BTA, rather than having rigid LMDS frequency plans in effect dictated by government regulation.

<sup>&</sup>lt;sup>16</sup> By contrast, dividing the 1.3 GHz of LMDS spectrum into smaller blocks for licensing purposes could unnecessarily confine LMDS to a particular frequency plan, potentially stunting the most vigorous development of the service.

In addition to allowing LMDS licenses to develop the most robust LMDS systems possible, auctioning 1.3 GHz licenses with flexible subleasing authority should achieve a further public interest benefit by enhancing the ability of non-profit and educational institutions to gain access to spectrum. Such institutions often lack the financial resources to bid for spectrum at auction, and therefore are not likely to be interested in or financially able to acquire large amounts of spectrum covering the massive geographic areas of BTAs for their limited discreet purposes. Accordingly, these non-profit and educational entities, which could be the leaders in developing the important distance learning applications of LMDS, could be more successful in entering into private agreements with licensees for spectrum to offer discreet LMDS services. In order to encourage commercial licensees to enter into such arrangements with non-profit and educational entities, the Commission should offer licensee flexibility and consider other inducements for the involvement of non-profit and educational institutions.

Cellular Vision supports the FCC's suggestion for cooperation among LMDS interests and incumbent 31 GHz licensees in exploring and developing possible methods that might allow both technologies to coexist in the 31 GHz band. We applaud legitimate and non-cumbersome means to promote the efficient, coordinated use of spectrum and will work with the Commission and any affected parties to facilitate the most robust, varied use of the 300 MHz of 31 GHz spectrum proposed for allocation to LMDS on a primary protected basis.

### III. ELIGIBILITY OF LECS AND CABLE OPERATORS TO HOLD LMDS LICENSES

The Commission devotes a substantial portion of the Fourth NPRM to the issue of whether the Commission should restrict the ability of incumbent local exchange carriers ("LECs") and cable operators to have an attributable interest in LMDS licenses in their geographic service areas. The Commission observes that the record in this proceeding strongly suggests that LMDS is a potentially important source of competition to both LECs and cable operators, and states that the issue of LEC/cable eligibility requires weighing the potential for competition presented by open entry against the possibility that the spectrum may be used to forestall competition.

CellularVision agrees with the Commission that LMDS will prove to be a source of significant competition to both LECs and cable operators. We further concur in the belief that either LECs or entrenched cable operators could, as successful bidders at auctions for LMDS spectrum, use their LMDS licensee status in an anti-competitive manner to protect their existing market-share. While in theory an auction should result in the highest and best use of the spectrum by the successful bidder, the desire of an incumbent monopolist to hold onto market-share in a converging marketplace could create an economic incentive to subvert the LMDS spectrum to a less competitive use. Thus, based on their incumbency as telcos or cable operators, CellularVision believes that the possibility of anti-competitive conduct by telcos or major MSOs is real enough to warrant serious restrictions on the ability of LECs and the largest cable operators to hold interests in LMDS licenses.

The basis for adopting some restrictions on the eligibility of incumbent LECs

and cable MSOs to hold LMDS licenses is further supported by the comments of the U.S. Small Business Administration's ("SBA") in the 28 GHz proceeding. As the SBA repeatedly has stated, "[t]he allocation of spectrum for LMDS represents another opportunity for the Commission to ensure that small businesses can be players in the burgeoning field of wireless communication. LMDS can provide an excellent and low-cost means of providing small businesses with expanding their opportunity to provide wireless telecommunication services." To the extent that large incumbents such as LECs and cable MSOs are restricted from holding LMDS licenses, the ability of small businesses to acquire LMDS licenses will be enhanced. 19

<sup>&</sup>lt;sup>17</sup> <u>See</u> Letter from Jere W. Glover, Chief Counsel for Advocacy, United States Small Business Administration, to Chairman Reed E. Hundt, June 8, 1995; Comments of the Chief Counsel for Advocacy of the United States Small Business Administration in Support of the Motion to Proceed by CellularVision, CC Docket No. 92-297, February 14, 1995, pages 4-5; Comments of the Acting Chief Counsel for Advocacy of the United States Small Business Administration on the Second Notice of Proposed Rulemaking, CC Docket No. 92-297, March 28, 1994.

<sup>&</sup>lt;sup>18</sup> Letter from Jere W. Glover, Chief Counsel for Advocacy, U.S. Small Business Administration, to Chairman Reed E. Hundt, June 8, 1995.

ln view of the substantial commitment of capital that will be required to deploy an LMDS system in a BTA, and the fact that LMDS licensees will require the wherewithal to compete against large corporations, possibly including entrenched telcos and cable operators, CellularVision has urged the Commission to define "small business" for LMDS purposes as an entity that has average annual gross revenues of not more than \$100 million for the preceding three years. See Letter from Michael R. Gardner, Counsel for CellularVision USA, Inc., to Chairman Reed E. Hundt and Commissioners, CC Docket No. 92-297, March 29, 1996, page 3; Reply Comments of CellularVision, CC Docket No. 92-297, October 10, 1995, pages 37-38. Moreover, to ensure that small businesses have a realistic opportunity to compete in auctions against large corporations, CellularVision believes that small businesses generally should be entitled to a 35% bidding credit; if, however, a small business is bidding for a particular license against a company with more than \$200 million in

Accordingly, as CellularVision stated in an ex parte submission in this proceeding dated March 29, 1996, CellularVision believes that the Commission should adopt restrictions that limit the seven Regional Bell Operating Companies and their affiliates, plus the ten largest cable MSOs and their affiliates, to acquiring an LMDS license in one BTA only – which BTA cannot be located in their respective telephone or cable service areas.<sup>20</sup> In this manner, the Commission will promote maximum competition through its nationwide licensing of LMDS in a new LMDS marketplace that is not dominated by incumbent LECs and cable operators.

#### IV. CONCLUSION

LMDS is a proven, broadband wireless technology that is poised to immediately provide consumers throughout the United States with new choices for interactive video, telephony and data services. To fully realize LMDS's tremendous potential, the Commission must allocate sufficient spectrum to allow LMDS to compete against major telcos and cable operators in the explosive U.S. communications marketplace. Specifically, in view of the encumbered nature of the 150 MHz from 29.1-29.25 GHz allocated to LMDS, CellularVision supports the Commission's proposed allocation of an additional 300 MHz at 31 GHz for LMDS, as well as the Commission's effort to

annual revenues, the small business should receive a 55% bidding credit. <u>See</u> Letter from Michael R. Gardner, Counsel for Cellular Vision USA, Inc., to Chairman Reed E. Hundt and Commissioners, CC Docket No. 92-297, March 29, 1996, page 5.

<sup>&</sup>lt;sup>20</sup> <u>ld</u>., page 5.

allocate additional spectrum below 27.5 GHz for LMDS. Further, to maximize the potential of LMDS to compete with incumbent telcos and cable operators, CellularVision supports the Commission's proposal to license each LMDS operator with at least 1.3 GHz of spectrum. The Commission should, however, provide LMDS licensees with the flexibility to enter into post-auction sublease agreements, which will allow the marketplace to determine the most efficient use of the LMDS spectrum, and also facilitate educational and non-profit access to LMDS spectrum.

Importantly, to ensure that LMDS will be a service provided by a new wave of entrepreneurs, the Commission should limit the seven RBOCs and their affiliates, plus the ten largest cable MSOs and their affiliates to acquiring an LMDS license in one BTA only – which BTA cannot be located in their respective telephone or cable service areas. Further, to facilitate the role of "small business" entrepreneurs in the exciting LMDS marketplace, the Commission should adopt a realistic definition of small business, consistent with the special build-out requirements of LMDS systems within large BTAs, and provide small businesses with generous bidding credits in LMDS spectrum auctions as defined above.

With a flexible and reasoned regulatory approach to LMDS, and auctions of 1.3 GHz licenses this year, the Commission's vision of LMDS will be realized, and LMDS

will emerge as a new provider of competitive consumer choices in interactive video, telephony and data services throughout the United States.

Respectfully submitted,

Cellular Vision USA, Inc.

Βv

Michael R. Gardner Charles R. Milkis William J Gildea, III

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Its Attorneys

August 12, 1996

#### Certificate of Service

I, Ryan J. McCumber, hereby certify that copies of the foregoing "Comments of CellularVision USA, Inc." were delivered by hand, on August 12, 1996, to the following:

Hon. Reed E. Hundt Chairman Federal Communications Commission 1919 M Street, NW, Room 814 Washington, DC 20554

Hon. James H. Quello Commissioner Federal Communications Commission 1919 M Street, NW, Room 802 Washington, DC 20554

Hon. Susan Ness Commissioner Federal Communications Commission 1919 M Street, NW, Room 832 Washington, DC 20554

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